

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

TONY FRANKLIN HASTINGS,

Appellant,

v.

STATE OF MISSOURI,

Respondent.

DOCKET NUMBER WD70480

Date: May 4, 2010

Appeal from:
Nodaway County Circuit Court
The Honorable Roger M. Prokes, Judge

Appellate Judges:
Division One: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

Attorneys:
Laura G. Martin, Esq., Kansas City, MO, for appellant.
Shaun J. Mackelprang, Esq., and Mary H. Moore, Esq., Jefferson City, MO, for respondent.

MISSOURI APPELLATE COURT OPINION SUMMARY

COURT OF APPEALS -- WESTERN DISTRICT

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WD70480

Nodaway County

Before Division One Judges: Lisa White Hardwick, Presiding Judge, James M. Smart, Jr. and Alok Ahuja, Judges

In November 2005 appellant Tony Hastings pled guilty to four counts of forgery pursuant to § 570.090, RSMo. He was sentenced in December 2005 to five years' imprisonment on Counts 1, 2, and 3, and to three years on Count 4. At a probation revocation hearing in June 2006, the trial court erroneously stated, from recollection, that Hastings had been sentenced to three years on Count 3. Hastings claims that this statement had the effect of reducing his sentence on Count 3 from five years to three years.

Hastings filed a motion for post-conviction relief pursuant to Rule 24.035. The circuit court denied the motion, finding that Hastings' sentences, including his sentence on Count 3, were final in December 2005 when he was originally sentenced, and that he was not resentenced on Count 3 at his June 2006 probation revocation hearing. Hastings appeals.

AFFIRMED.

Division One holds:

In December 2005, the trial court orally pronounced Hastings's sentences, including a five-year sentence on Count 3. The sentences were fully and accurately reduced to a written judgment on the same day. At that time, Hastings's sentences became final. Although the execution of Hastings's

sentences was suspended, the trial court retained no power to modify the December 2005 sentences when it later executed those sentences following revocation of Hastings's probation. Therefore, despite the trial court's inaccurate recollection of the length of Hastings's sentence on Count 3 at the probation revocation hearing, the court's oral statement at the probation revocation hearing that Hastings had been sentenced to only three years' imprisonment on Count 3 could not reduce his sentence on that count. The motion court properly denied Hastings relief under Rule 24.035.

Opinion by: Alok Ahuja, Judge

May 4, 2010

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